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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

Q. TODD DICKINSON,
ACTING COMMISSIONER OF PATENTS
AND TRADEMARKS,

Petitioner,

v.

MARY E. ZURKO, THOMAS A CASEY, JR., MORRIE GASSER,
JUDITH S. HALL, CLIFFORD E. KAHN, ANDREW H. MASON,
PAUL D. SAWYER, LESLIE R. KENDALL AND
STEVEN B. LIPNER,

Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit**

BRIEF OF THE DALLAS-FORT WORTH INTELLECTUAL PROPERTY LAW ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF THE ISSUE

On November 2, 1998, this Court granted a petition for a writ of certiorari on the following issue:

> Whether a standard of judicial review more stringent than that specified by the APA, purportedly used by courts before the adoption of the Act in reviewing factual findings made by a particular agency, is an "additional requirement * * * otherwise recognized by law" within the meaning of Section 559.

The Dallas-Fort Worth Intellectual Property Law Association respectfully submits this brief directed to that question only, which the Association urges be answered: Yes, for all of the factual findings made by the United States Patent and Trademark Office and reviewed by the Federal Circuit Court of Appeals.

INTEREST OF THE *AMICUS CURIAE*[*]

Formed in the mid-1950s, the Dallas-Fort Worth Intellectual Property Law Association is a regional association of persons concerned with the patent, trademark, copyright, trade-secret, and other laws protecting intellectual-property rights. The Association, which was formerly known as the Dallas-Fort Worth Patent Association, is a member of the National Council of Intellectual Property Law Associations.

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* The parties' letters of consent have been filed with the Clerk pursuant to the rules of this Court. No interested party authored this brief, in whole or in part, or paid any of the costs of producing it.

The Association's over 100 members, mostly attorneys, regularly represent clients in prosecuting patent and trademark applications before the United States Patent and Trademark Office (PTO), including interference, opposition, and cancellation proceedings; conduct patent and trademark litigation in the courts; and advise clients on business and licensing matters involving intellectual-property issues. The members' clients are split roughly evenly between patent and trademark owners and accused infringers.

The Association's members frequently handle matters on appeal before the PTO appeal boards as well as appeals to the Federal Circuit. They also are called on regularly by clients to analyze PTO decisions to determine whether appeal is appropriate. In these roles, the Association's members have accumulated substantial experience with practical considerations arising under the present system of appeals from PTO decisions. The Association's attorney members also represent individuals, universities, and small and large businesses in patent and trademark infringement litigation, thereby gaining insight into the present system of appeals from PTO decisions.

Neither the Association nor any of its members has any direct interest in which side prevails in this lawsuit, except to the extent that the outcome affects the administration of the patent and trademark laws. A principal object of the Association is to aid in the institution of improvements in the patent and trademark laws and procedures for administering those laws. To promote that objective, this *amicus curiae* brief sets forth the Association's observations on the present system for appeals and the p[illegible]notion of a fair, effective, and predictable intellectual property system by the present appellate review system.

SUMMARY OF ARGUMENT

For at least one-hundred years, the Federal Circuit and its predecessors have used the "clearly erroneous" standard to review findings of fact made by the PTO. That standard is an integral part of the system for examination of patent and trademark applications. Because the use of the "clearly erroneous" standard has been a fundamental assumption underlying repeated revisions to the statutory framework governing the patent and trademark system, this Court should leave any adjustment of the standard of review to Congress, at least absent a substantial need for immediate change.

In urging such a change, the Commissioner fails to identify any benefit the change would bring to the patent and trademark system. All the Commissioner offers is the 52-year-old Administrative Procedure Act (APA), which the Commissioner argues has always required a more deferential standard for review. A change to a more deferential standard now, however, would needlessly inject uncertainty and expense into the operation of the patent examination system, making it less attractive to patent and trademark applicants. It would also upset ongoing legislative efforts to refine and improve the system. Particularly in view of the longstanding reliance on the current standard, the Commissioner's argument does not justify fundamentally adjusting the regulatory scheme by adopting a new standard for review of PTO findings of fact.

The distinctive institutional framework for examination and enforcement of patents and trademarks, moreover, is poorly suited to use the "substantial evidence" standard advocated by the Commissioner. In the usual administrative review context, where the actions of specialized agencies are reviewed by unspecialized district courts or regional courts of appeal, the highly deferential "substantial evidence" standard is necessary to ensure that

decision making benefits from the agency's expertise. In the case of PTO decisions, however, Congress has directed appeals to the Federal Circuit, which has been invested with its own expertise in patent-law matters. In light of the review by a specialized appellate court, the somewhat less deferential "clearly erroneous" standard is appropriate for review of PTO decisions.

ARGUMENT

I. The Commissioner Has Failed to Advance Any Newly Arising Problem With the Present System That Would Justify Changing the Long-Enduring "Clearly Erroneous" Standard for Review of PTO Fact Findings.

The use of the "clearly erroneous" standard for review of findings of fact by PTO boards has been a longstanding fixture of federal jurisprudence, having anchors in the last century. Long before enactment of the Administrative Procedure Act on which the Commissioner now relies, the "clearly erroneous" standard was firmly established in the decisions of the Federal Circuit predecessor, the Court of Customs and Patent Appeals (the "CCPA"). Indeed, within two years of its creation in 1929,[1] the CCPA had ruled that Patent Office decisions must be upheld unless "manifestly wrong." *In re Demarest*, 38 F.2d 895, 896 (CCPA 1930) (*ex parte* patent appeal); *Montgomery Ward & Co. v. Sears, Roebuck & Co.*, 49 F.2d 842, 843 (CCPA 1931) (trademark interference). The CCPA inherited that standard for review as an integral part of the jurisdiction over patent-office appeals, which previously resided in the Court of Appeals for the

[1] The Court of Customs and Patent Appeals was created by transferring the jurisdiction to hear patent-office appeals from the United States Court of Appeals for the District of Columbia to the United States Court of Customs Appeals, and renaming the latter court. Act to Change the Title of the United States Court of Customs Appeals, ch. 488, 45 Stat. 1475 (1929) (70th Cong.).

District of Columbia.[2] That court, in turn, had used the standard in decisions at least as early as 1897[3] and frequently employed it over the years until its patent-office-appeal jurisdiction was transferred to the CCPA in 1929.[4] Accordingly, since its emergence a century ago, the "clearly erroneous" standard for review has been a fundamental part of the patent-examination system, affecting the manner in which patents are examined in the PTO.

Although the "clearly erroneous" standard is itself deferential, it is less deferential than the "substantial evidence" standard now advocated by the Commissioner and allows a more meaningful judicial review on the facts. Over the many years it has been available, review of PTO decisions by a court with patent-law expertise has influenced pervasively the manner in which the examination system operates. For example, meaningful review by the Federal Circuit leaves room for a more informal examination process within the PTO, thereby promoting a cooperative relationship between patent attorneys and

[2] Prior to transfer of jurisdiction, patent-office appeals made up approximately one-third of the caseload of the Court of Appeals for the District of Columbia, severely burdening that court's three judges. For a description of the circumstances in which the patent office appeal jurisdiction was transferred, see P.J. Federico, *Evolution of Patent Office Appeals* (pt. 2), 22 J. PAT. OFF. SOC. 920, 946-48 (1940).

[3] *In re Barratt*, 11 App. D.C. 177, 179 (1897) (reversal only in "very clear case" of error).

[4] *Hopkins v. Riegger*, 262 F. 642, 643 (D.C. Cir. 1920) ("[The question being one of fact, as here, we will not review the Commissioner's decision, unless it is manifestly wrong."); *Bonine v. Bliss*, 259 F. 989, 989, 990 (D.C. Cir. 1919) ("palpable error"; "manifest error"); *Lindmark v. Hodgkinson*, 31 App. D.C. 612, 614 (1908) ("manifest error"); *Podlesak v. McInnerney*, 26 App. D.C. 399, 405, 408 (1906) ("manifest error"; "palpable error"); *cf. Leggett v. Avery*, 101 U.S. 256, 258 (1880) (infringement suit applying "manifest error" standard to the propriety of the Commissioner's reissuance of patent).

examiners and permitting the PTO efficiently to carry its very substantial workload. The Federal Circuit specialized review of PTO decisions reduces the need for more exacting review of examiners' decisions within the PTO, thereby freeing the PTO boards to employ simple procedures well-suited to correcting the more apparent examiners' errors. It also allows applications to be prosecuted in a relatively forgiving atmosphere, thereby reducing the costs to inventors.

As a basic component of the statutory scheme for patent and trademark examinations, the "clearly erroneous" standard for review should not be altered without substantial justification. As this Court unanimously noted in *California v. Federal Energy Regulatory Commission*, 495 U.S. 490, 500 (1990), courts should exercise special caution when considering whether "fundamentally to restructure a highly complex and long-enduring regulatory regime, implicating considerable reliance interests of . . . participants in the regulatory process." Judicial changes to complex regulatory systems established by statute are

> inconsistent with the measured and considered change that marks appropriate adjudication of such statutory issues. See *Square D Co. [v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409,] at 424 [(1986)] (for statutory determinations, "it is more important that the applicable rule of law be settled than it be settled right. . . . This is commonly true, even where the error is a matter of serious concern, provided correction can be had by legislation,'" quoting *Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 [(1932)] (Brandeis, J., dissenting)*).

495 U.S. at 500.[5] Thus, changes to the statutory scheme for patent and trademark examination, such as the significant change now advocated by the Commissioner, should be accomplished by legislative amendment rather than judicial decision, at least absent a demonstrated need for a more immediate correction.

Remarkably, the Commissioner does not argue that the present standard for review is burdensome, results in mistaken issuance of patents or registration of trademarks, or hampers the operation of the patent-and-trademark system in any way. The Commissioner advances utterly no reasons why a change in the standard for review would benefit the patent-and-trademark system. Instead, the primary justification for change offered by the Commissioner is its contention that the more stringent clearly erroneous standard of judicial review is not an "additional requirement...otherwise recognized by law" within the meaning of Section 559 of the APA. Pet. for Writ of Cert. at 14-17. In view of the longstanding use of the present standard for review, this type of change should be made only to correct demonstrated mischief, not simply because of a recent revelation that a decades-old statute arguably provides for a different standard.

Although the present patent and trademark system, like any complex system, has its failings, none of these failings can credibly be blamed on the present standard for review of board decisions. If unworthy patents have been issued or unworthy trademarks have been registered, it is rarely because a board-affirmed rejection was reversed by the appeals court under the "clearly erroneous" standard, when it would have been sustained under a more deferential standard. Rather, the most costly and

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[5] *Accord Patterson v. McLean Credit Union*, 491 U.S. 164, 172-73 (1989) ("Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done.").

uncertain intellectual-property disputes involve validity issues never examined by the PTO. The change in the standard for review advocated by the Commissioner would not address this problem because it would do nothing to improve the PTO's ability to conduct a high-quality examination of every patent and trademark application. Instead, by diminishing the protections afforded to applicants on appeal, the advocated change would promote more adversarial prosecution within the PTO, thereby reducing the overall quality of examination.

Indeed, the challenges now confronting the PTO make a more deferential standard for review particularly inappropriate. The quickening pace of technological innovation, the increasing number of applications filed, and ever-harsher budgetary constraints have dramatically increased the workload of the PTO appeal boards, and have correspondingly reduced the consideration they can give to each matter appealed to them. With respect to the Board of Patent Appeals and Interferences, for example, recent Commissioner's Annual Reports show significant increases in pending appeals, without a corresponding increase in dispositions.[6] The result has been an exploding

[6] ASSISTANT SECRETARY OF COMMERCE & COMMISSIONER OF PATENTS AND TRADEMARKS, ANNUAL REPORT--FISCAL YEAR '93, at tbl. 13 (1993) [hereinafter COMMISSIONER'S 1993 ANNUAL REPORT]; U.S. DEP'T OF COMMERCE & U.S. PATENT & TRADEMARK OFFICE, WORKING FOR OUR CUSTOMERS: A PATENT & TRADEMARK OFFICE REVIEW, FISCAL YEAR 1994, at 65 tbl. 8 (1994) [hereinafter COMMISSIONER'S 1994 ANNUAL REPORT]; U.S. DEP'T OF COMMERCE & U.S. PATENT & TRADEMARK OFFICE, SETTING THE COURSE FOR OUR FUTURE: A PATENT & TRADEMARK OFFICE REVIEW, FISCAL YEAR 1995, at 91 tbl. 8 (1995) [hereinafter COMMISSIONER'S 1995 ANNUAL REPORT]; U.S. DEP'T OF COMMERCE & U.S. PATENT & TRADEMARK OFFICE, MANAGING CHANGES FOR GLOBAL CHALLENGES: FISCAL YEAR 1996, A PATENT & TRADEMARK OFFICE REVIEW, at tbl. 8 (1996) [hereinafter COMMISSIONER'S 1996 ANNUAL REPORT]; U.S. DEP'T OF COMMERCE & U.S. PATENT & TRADEMARK OFFICE, CREATING A PATENT & TRADEMARK SYSTEM FOR THE 21ST CENTURY; A PATENT & TRADEMARK OFFICE

backlog and less time for that board to spend on each appeal.[7] According to the Commissioner's Annual Reports, the Trademark Trial and Appeal Board also has been unable to keep up with its burgeoning filings.[8] Thus, no one can credibly argue that the boards provide a higher quality of decision making than was prevalent in the past, which might merit an increase in the deference applied on appellate review.

REVIEW, FISCAL YEAR 1997 (1997)[hereinafter COMMISSIONER'S 1997 ANNUAL REPORT].

[7] For *ex parte* patent appeals and patent interferences combined, the Commissioner's Annual Reports report the following numbers of filings, dispositions, and pending cases, from which average pendencies may be calculated:

Fiscal Year Ending 9/30	Filings	Dispositions	Cases Pending	Average Pendency (Months)
1992	n/a	n/a	2242	—
1993	4746	4320	2668	7.4
1994	4721	3250	4139	15.5
1995	5372	3643	5867	19.4
1996	4232	3318	6581	24.3
1997	4926	2917	6847	24.9

[8] COMMISSIONER'S 1993 ANNUAL REPORT, at tbl. 22 p. 69 (5855 filings, 3501 dispositions); COMMISSIONER'S 1994 ANNUAL REPORT, at tbl. 18, p. 72 (5139 filings, 3408 dispositions); COMMISSIONER'S 1995 ANNUAL REPORT at tbl. 19, p. 100 (6101 filings, 4297 dispositions); COMMISSIONER'S 1996 ANNUAL REPORT, at tbl. 19 (7702 filings, 6663 dispositions); COMMISSIONER'S 1997 ANNUAL REPORT, at tbl. 23 (8534 filings, 7146 dispositions).

II. Changing the Standard for Review Would Present Substantial Practical Problems.

In the century since the "clearly erroneous" standard was first used (including the fifty-two years since the APA was enacted), applicants and their attorneys have become accustomed to that standard, basing their calculations whether to appeal adverse decisions on their familiarity with the standard and the decades of judicial decisions applying it. Although predictions are always difficult, applicants and their attorneys can make some reasoned assessments of the prospects for appeal in particular factual circumstances by analyzing the many judicial decisions over the decades reviewing the PTO boards. Their ability to make these assessments undoubtedly reduces the number of unrealistic appeals that are filed from board decisions.

Throwing a new standard for review into the calculus would make the already difficult task of predicting outcomes even more complex and uncertain. This may cause rejected applicants, deprived of guidance as to the prospects for review, to pursue many appeals that ultimately prove unsuccessful or pass up many meritorious appeals. It would likely be many years before a reasonable level of guidance could be restored by development of a significant body of precedent under a new standard. The increased cost and uncertainty can only discourage use of the patent and trademark system, perhaps causing inventors, for example, to rely on trade-secret, instead of patent, protection.

Introducing a new, more deferential standard for review might also increase the cost of prosecuting applications within the PTO. In the ordinary course of prosecution, applicants are confronted with various types of examiners' errors, most relatively apparent and some with profound consequences to the property rights of the applicant. Under the current review

scheme, a simple appeal to the appropriate PTO appeal board affords applicants a very cost-effective means of correcting the most apparent errors. If the boards' decisions are insulated from meaningful judicial review, however, proceedings at the appeal board will become complicated as attorneys realize the uphill battle that will ensue if the board sustains the examiner's rejection. Prudence would require even the simplest errors to be met with elaborate and expensive briefing before the board. As a result, prosecution will become more costly.

Judicially adopting a more deferential standard for review would also frustrate legislative efforts to improve the patent-and-trademark system. By way of example, Congress has recently considered proposals to revise the procedures for PTO reexamination of issued patents.[9] To encourage those challenging the validity of issued patents to submit their challenges to the PTO, with its expertise in patent matters, rather than to the district courts, the proposals allow enhanced *inter partes* participation in reexamination.[10] A key assumption of the proposals is that the judicial review available for reexamination decisions would be comparable to that available for district court decisions on validity issues.

If board decisions are given more deference on review than the "clearly erroneous" standard applied to decisions of district judges, however, challengers' incentives to submit validity issues to the PTO will be diminished, thereby undercutting the effectiveness of reexamination reform. This is only one

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[9] H.R. 400, 105th Cong., Secs. 501-505 (as committed to Committee of the Whole House Mar. 20, 1997); S. 507, 105th Cong., Secs. 501-506 (as reported by committee May 23, 1997).

[10] H.R. 400, *supra*, Secs. 503(d), (e), 504(c), (d) (to amend 35 U.S.C. §§ 305(b), 306(b), (c), 134(c), 141); S. 507, *supra*, Secs. 503(d), (e), 504(b), (c) (to amend 35 U.S.C. §§ 305(b), 306(b), (c), 134, 141).

illustration of the wisdom of leaving to Congress the consideration of adjustments to the complex and evolving statutory scheme for examination of patent and trademark applications, including adjustments to the standard for review.

III. By Creating The Federal Circuit, A Court With Special Expertise in Patent Law, and Vesting it with Jurisdiction Over PTO Board Decisions, Congress Recognized that a Meaningful Review Under the "Clearly Erroneous" Standard Is Appropriate

By establishing the general principle that courts will ordinarily review agency fact-findings under the highly deferential "substantial evidence" standard, the APA seeks to permit appropriate judicial monitoring of administrative decisions while still retaining the full benefits of agency expertise.[11] In the usual circumstances of judicial review of administrative decisions, the fact-findings of specialized agencies established to provide expertise in technical areas are subject to review by generalist district courts or regional courts of appeals. There is a substantial danger that searching review by those courts might dilute the benefits of the technically expert decision making that the agency was established to provide. In those circumstances, the APA's highly deferential standard for review helps ensure that the agency and reviewing court each contribute their strengths to the decision making process.

Review of PTO decisions, however, presents a distinctively different circumstance. In 1929, acting against the background of the already well established "clearly erroneous" standard, Congress created the CCPA as a specialized court to hear the technically intensive appeals arising in customs and

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[11] 3 CHARLES H. KOCH, JR., ADMINISTRATIVE LAW & PRACTICE, § 9.2[1], AT 3-4 (2D ED. 1997).

patent matters.[12] In recognition of the "selective benefit of expertise in highly specialized and technical areas,"[13] Congress created the Federal Circuit in 1982, thereby extending the CCPA's model of concentrating appeals of certain types of cases in a single appellate court.[14]

A prominent congressional concern in creating the Federal Circuit was to promote uniform and well-informed treatment of patent cases.[15] To meet this concern, Congress invested the Federal Circuit with expertise in patent issues as well as jurisdiction over all patent appeals (not just those from the PTO).[16] Because patent law often intertwines legal principles with technical facts, Congress also provided that court with the CCPA's practice of using technical advisers to assist in resolving patent appeals.[17] By congressional design, the Federal Circuit reviews patent issues not only with special institutional competence in the intricacies of patent law, but with the necessary technical expertise as well.

The Federal Circuit's review of PTO decisions, therefore, does not present the usual circumstance of a generalist court reviewing a specialist agency, with the attendant danger that

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[12] Act to Change the Title of the United States Court of Customs Appeals, ch. 488, 45 Stat. 1475 (1929) (70th Cong.).

[13] S. REP. NO. , at 6 (1981) (quoting Hon. Jon O. Newman), *reprinted in* 1982 U.S.C.C.A.N. 11, 16.

[14] Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25.

[15] S. REP. NO. 97-275, at 5 (1981), *reprinted in* 1982 U.S.C.C.A.N. 11, 15.

[16] 28 U.S.C. §§ 1292(c), 1295(a)(1), (4)(A).

[17] *Id.* Sec. 120(c) (codified at 28 U.S.C. § 715(c), (d)); *see* S. REP. NO. 97-275, at 17 (1981), *reprinted in* 1982 U.S.C.C.A.N. 11, 12.

judicial review will dilute agency expertise. It instead presents a distinctive situation[18] in which Congress has established an expert appellate court to review an expert agency. In view of the Federal Circuit's well-recognized patent expertise,[19] the benefits of expert decision making are fully preserved by its review of PTO boards under the "clearly erroneous" standard, which is the standard appellate courts commonly employ for review of district

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[18] The review of most other agencies within its appellate jurisdiction does not present similar statutory silence as to the standard for review. *See* 2 U.S.C. § 1219(a)(3)(C)(iii) ("substantial evidence" review of EEOC decisions on discrimination claims by Presidential appointees); 2 U.S.C. § 1407(d)(3) ("substantial evidence" review of Congress' Board of Directors of the Office of Compliance); 5 U.S.C. §§ 7121, 7703(c)(3) ("substantial evidence" review of MSPB or arbitrator); 15 U.S.C. §3416(b), (c) (APA-standard review of certain emergency orders of FERC); 19 U.S.C. § 1337(c) (APA-standard review of USITC); 31 U.S.C. § 755(a)(3) ("substantial evidence" review of General Accounting Office Personnel Appeals Board); 38 U.S.C. § 502 (APA-standard review of Secretary of Veterans Affairs); 41 U.S.C. §§ 607(g)(1)(A), 609(b) ("substantial evidence" review of agency boards of contract appeals). Notably, the only instance, other than review of the PTO, without an express statutory standard for review of fact-findings is in appeals from plant-variety-protection decisions of the Secretary of Agriculture, which likely were intended to use the same standard as historically used for the PTO's patent decisions. *See* 7 U.S.C. § 2461.

[19] *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 117 S. Ct. 1040, 1054, 41 U.S.P.Q.2d 1865, 1876 (1997) (leaving precise formulation of doctrine-of-equivalents test to Federal Circuit's "sound judgment in this area of its special expertise"); *Dennison Manufacturing Co. v. Panduit Corp.*, 475 U.S. 809, 811, 229 U.S.P.Q. 478, 479 (1986) (remanding to obtain "the Federal Circuit's informed opinion on the complex issue of the degree to which the obviousness determination is one of fact"); *see also United States v. Fausto*, 484 U.S. 439, 464 n.11 (1988) (Stevens, J., dissenting) ("Because its jurisdiction is confined to a defined range of subjects, the Federal Circuit brings to the cases before it an unusual expertise that should not lightly be disregarded."); *cf. Cardinal Chemical Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 105, 26 U.S.P.Q.2d 1721, 1731 (1993) (Scalia, J., concurring in part) (noting experience of Federal Circuit judges in their specialized patent jurisdiction).

judge findings and accords the still-substantial deference[20] that sensibly flows from the trier of fact's greater familiarity with the evidence received. A judicial change to the more deferential "substantial evidence" standard is wholly unnecessary in view of the provision by Congress of a specialized court to review determinations of the PTO boards.

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[20] *See Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous.").

CONCLUSION

Particularly in view of the lack of any explanation by the Commissioner as to why a change from the "clearly erroneous" standard would benefit the patent and trademark system, this Court should not depart from the century-old use of that standard for review of fact-findings from PTO decisions. That standard has become a fundamental component of the statutorily established examination scheme and changing it now would impose substantial and unnecessary costs and uncertainties on participants in the patent and trademark system. The Federal Circuit's specialized legal and technical review of board decisions, moreover, makes it particularly appropriate that it engage in a more meaningful, "clearly erroneous" review of PTO fact-findings, rather than being required to affirm whenever "substantial evidence" is found to support those findings.

Respectfully submitted,

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